CONSULTING

May 25, 2011

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

Ms. Carol Mattey
Wireline Competition Bureau
Federal Communications Commission

Dear Ms. Dortch and Ms. Mattey: [VIA ECFS]

RE: Ex parte filing in WC Docket No. 05-337

The purpose of this ex parte is to respond directly to a comment made by Ms. Mattey during her remarks to the Alaska Telephone Association meeting in Valdez, Alaska on May 24, 2011. During that session, Ms. Mattey had a dialogue with Al Pedersen with respect to her interest in a cost-based model that was geared to addressing the identical support dilemma that faces the FCC.

During the 2007 and 2008 timeframe, GVNW was actively involved with this issue, developing both its initial WiCAC cost model and then integrating that model with one developed by Mr. Ron Strecker of Panhandle Telecommunications Systems, Inc. The resulting WiPan cost-based model was filed in an ex parte dated August 8, 2008.

As a refresher to the record, on August 8, 2008, Jeffry H. Smith and Kenneth T. Burchett from GVNW Consulting, Inc. and Ron Strecker from Panhandle Telecommunication Systems, Inc. conducted a telephonic ex parte with Nick Alexander of Commissioner McDowell's office.

During this meeting nearly three years ago, we presented the WiCAC/Panhandle (WiPan) proposal, a synthesis of the WiCAC II and Panhandle proposals that is intended to provide an auditable and administratively workable solution, while also recognizing the problems facing the smaller rural wireless providers. The WiPan proposal was geared to meet the Commission's comprehensive reform goals for federal USF in place in 2008.

In the April 17, 2008 comments in the Commission's USF Reform Notices, several parties expressed their support for the WiCAC and Panhandle proposals. Our discussions focused on how we integrated these separate proposals into a WiCAC/Panhandle Plan; using the WiCAC II costing module, with minutes as a denominator for the loop equivalent portion, and incorporating the Panhandle roaming rate concept. We also reviewed the implications of delaying the transition from the identical support scheme to a cost-based approach that is a major topic in the USF Reform Notices.

The remaining 10 pages of this document are an unredacted version of the final 10 pages of the August 8, 2008 filing. The four attachments are identical to the August, 2008 ex parte filing as well.

As required by the Commission's rules, this ex parte record is now filed in the above referenced docket. If there are any questions, please call me on 503.612.4409.

Sincerely,

Filed via ECFS 5/25/11

Jeffry H. Smith
Vice-President and Division Manager – Western Region
Chairman of the Board of Directors

Attachment – WiPan Part 32 (20 pages)
EHCLS algorithm – file name is WiPAN model 72108.xls
ESS algorithm – file name is ESS MODEL.xls
ESSS algorithm – file name is ESSS MODEL.xls

Copy to

Alan Pedersen, SIC
Ron Strecker, Panhandle
Ken Burchett, GVNW
John Rose, OPASTCO
Derrick Owens, WTA
Mike Romano, NTCA

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WiCAC/Panhandle Plan (WiPan) – History and Background

On July 12, 2007, Jeffry H. Smith and Kenneth T. Burchett from GVNW Consulting, Inc. and Michael Fox from RT Communications conducted an ex parte meeting with Commissioner Ray Baum in Salem, Oregon. The purpose of this meeting was to present a proposal to replace the identical support rule with Wireless Carrier Actual Cost (WiCAC). Subsequent to this initial Joint Board ex parte meeting, a series of Commission ex parte meetings were conducted, including: September 18-19, 2007, with the offices of Chairman Martin and Commissioners McDowell and Adelstein; an ex parte filing of October 9, 2007, that communicated frequently asked questions concerning WiCAC; and an ex parte of November 7, 2007 with the offices of Chairman Martin and Commissioner Tate. On June 3 and 17, 2008, the WiCAC II proposal was presented to Commissioner Baum and Amy Bender of Chairman Martin's office, respectively.

On January 11, 2008, Ron Strecker of Panhandle Telecommunication Systems, Inc. filed the Panhandle Plan with the Commission. On January 23rd and 24th, Ron Strecker along with Carrie Bennett and Ken Johnson of Bennet & Bennet conducted a series of Commission ex parte meetings with the offices of Chairman Martin, and Commissioners Adelstein, McDowell, Tate and Copps, along with members of the Wireline Competition Bureau to highlight the concepts of the Panhandle Plan. Follow-up ex parte meetings to discuss the merits of the Panhandle Proposal were held on April 10th with the offices of Chairman Martin and Commissioner Tate, and on April 11th meetings were conducted with Commissioner Adelstein's office and the Wireless Bureau. Additional follow-up ex parte meetings were held on April 15th with the Wireline Competition Bureau, and on May 21st with Commissioner Adelstein's office.

The Commission has previously ordered a similar costing basis for CETCs. The Commission imposed certain conditions on Alltel in its merger order[1] that related to the level of support to be received. In the Reform Notices, several commenters have noted that using lines as a denominator in a CETC wireless cost-based calculation may not be the best approach. GVNW is reluctant to concede that argument, due to the fact that in both the Alltel merger Order and in the CETC Interim Cap Order there is an explicit and implicit reference to lines as an appropriate denominator. However, GVNW recognizes that consideration of minutes as a denominator is appropriate in this public policy debate. Over the past several months, Panhandle has sponsored some empirical research that has yielded a hypothetical benchmark of what the national average cost per minute of providing wireless service currently is. In the spirit of compromise necessary to file a consensus rural plan, we have modified the EHCLS of the WiCAC costing module and incorporated minutes as the denominator for wireless carriers to compute their EHCLS cost basis of providing services eligible for universal service support.

[1] Applications of ALLTEL Corporation for Consent to Transfer Control of Licenses, Leases and Authorizations, WT Docket No. 07-128, Memorandum Opinion and Order, released October 26, 2007. In footnote 44 of that Order, the Commission stated in part: *For competitive ETCs providing service to rural study areas, a cost per line would be developed for each competitive ETC for each incumbent study area that it serves. Support could be determined by comparing the competitive ETCs cost per loop incurred to provide the supported services to the national average cost per loop developed by the National Exchange Carrier Association (NECA) pursuant to section 36.613 of the Commission's rules, as adjusted to accommodate the cap on incumbent high-cost loop support.*

WiCAC/Panhandle Plan – A consensus public policy approach

In the filings to date in the Reform Notices, several themes have emerged. First, the comment and reply filings in these Reform Notice dockets may be categorized as representing two points of view: those that are interested solely[2] in fund reductions, and those that to varying degrees seek fund equity. The WiCAC/Panhandle Plan, and both the WiCAC and Panhandle proposals that serve as its foundational basis, seek greater funding equity.

Second, some of the ex partes and comments supporting smaller rural wireless providers have described some of the challenge of providing mobility in the smaller markets. The WiPan proposal is an alternative[3] for Commission consideration if the Commission deems that the circumstances of rural wireless providers merit special consideration. While ultimately the Commission must decide the best course of action, part of the purpose of the WiPan is to offer a replicable and auditable example for the Commission to consider as a part of its deliberations regarding the circumstances of smaller rural wireless providers. In the Montana Telecommunications Association (MTA) Reform Notices filing at pages 13-14, MTA states that: "*According to MTA member companies that have operated wireless companies, the 23 Part 32 accounts targeted by the WiCAC proposal would not be difficult for wireless carriers to capture. The WiCAC proposal, in other words, recommends a viable method for identifying wireless CETC costs that in turn could be used to determine cost-based wireless CETC support*."

Third, several parties have attempted to obfuscate the debate on an identical support replacement by understating the abilities of CETCs to produce basic accounting data. One of the more egregious examples of this strategy is contained in the GCI comment filing in the Reform Notice proceeding. At page 70 of its filing, GCI appears to pretend that "documentation" requirements would be new phenomena for CETCs. If this is the case, then we ask how the Commission and the Universal Service Administration Company requirement to ensure that support funds are used for the purpose of providing supported services are being met by CETCs such as GCI. At page 73, GCI criticizes the WiCAC proposal focus on wireless technology. We invite GCI to propose some supplemental rules to address their multiple technology platforms.

[2] See, for example, AT&T and Verizon. AT&T's proposal to phase out wireless CETC support over a sixty month period is one of the more aggressive proposals offered to date. Verizon's intentions are the same, but are cloaked in the dangerous regulatory laboratory experiment known as reverse auctions.

[3] The WiPan, and its predecessor WiCAC I and WiCAC II costing modules, is the only proposal for a cost-based alternative to the identical support paradigm that is replicable and auditable and includes a set of proposed Commission rules for review.

<u>Components of the WiCAC/Panhandle Plan</u>

This WiPan proposal contains all three of the WiCAC II modules that added two more potential universal service support mechanisms for wireless CETCs serving less than 50,000 lines, resulting in smaller wireless CETCs having potential access to three wireless cost-based mechanisms as follows:

Identical Basis for HCL - Equivalent High Cost Loop Support (EHCLS)[2007 WiCAC I]
Identical Basis for Switching – Equivalent Switching Support (ESS)
Identical Basis for Scope and Scale issues – Equivalent Scope and Scale Support (ESSS)

Additional USF Recipient Obligations – This WiPan proposal also requires carriers receiving federal universal service support to extend their network to other carriers at a supported roaming rate. This may also be referred to as the local wholesale rate. The suggested rate is to be 1.15 times that of the national average cost to produce a minute of use.

We now discuss each in turn.

Identical Basis for High Cost Loop – Equivalent High Cost Loop Support (EHCLS)

This is the original WiCAC proposal, now modified to include minutes in the denominator. In simplest terms, this first WiCAC proposal replicates the current wireline HCF algorithm in a manner that recognizes the differences between wireline and wireless architecture. For example, the proposed 23 accounts in a new 32.8000 are based on the investments a wireless carrier must make (e.g., towers, spectrum acquisition). Several modifications are proposed to Part 54 to enable cost-based wireless carrier support. Based on the results of the WiCAC algorithm, wireless CETCs originally would be compared against the current benchmark Cost per Loop (NACPL) to determine support eligibility, or used in a separate mobility funding mechanism. In the WiPan, eligibility is determined based on the relationship to a national average cost per minute.

Objections on the part of wireless carriers that they would be unable to capture data for less than two dozen accounts appear to be disingenuous. It will be instructive to see if several carriers will file[4] WiPAN data with the Commission, serving to directly refute claims by several commenters that WiCAC I or WiCAC II costing is problematic to compute.

One of the benefits of moving wireless carriers to the WiPan for EHCL support is that a cost-based approach to high-cost funding would establish "a modicum[5] of competitive neutrality in the high-cost system" for ETCs and CETCs.

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[4] If, for example, filings are made by carriers in the next 3-6 months, it would serve to refute the ex parte claims of AT&T that the proposal is overly complex and burdensome.
[5] WCD No. 05-337, Reply comments of OPASTCO, July 2, 2007, pages 13-14. OPASTCO further states: "If competitive ETCs do not want to provide and support their costs and be held accountable for the use of publicly provided funds – just as rural ILECs are – they can choose not to seek ETC designation."

Identical Basis for Switching – Equivalent Switching Support (ESS)

If the Commission determines that more than the equivalent HCL support for wireless CETCs is in the public interest, we propose that only wireless carriers serving less than 50,000 lines[6] be eligible for the equivalent switching support mechanism. Many of the larger wireless carriers are able to enjoy the scope and scale of relying on regional switching configurations. For the smaller carriers, the WiPan proposes an Equivalent Switching Support mechanism that is patterned after the current local switching support mechanism that is available to ILECs.

The factor that attracted the most attention from several commenters in WiCAC I was the proposed intraMSA ratio. We direct the detractors of the intraMSA ratio[7] to turn their collective attention now to line 60 in the ESS algorithm, 1996 Interstate Unweighted Dial Equipment Minute (DEM) Factor. For carriers that are not able to calculate this factor, we propose a 15% default factor as this is the national average for the period in which the ETCs developed their factor. We previously included the basis for this default factor as an attachment to the WiCAC II ex parte.

Several parties expressed a concern as to the level of detail contained in WiCAC I. We disagree with those concerns, and have included similar accounts that are included in the ILEC LSS mechanism for wireless CETCs. The accounts excluded are the account previously used for Class B RTB Stock (Account 1402), which is no longer included in ETC cost studies; and Account 1500, Other Jurisdictional assets – net and Account 4370, Other Jurisdictional Liabilities and Deferred Credits, net, as CETCs typically do not have jurisdictional adjustments. We also propose restricting the amounts includable in line 480 of the ESS algorithm relating to charitable contributions to exclude any amounts expended by some national wireless carriers[8] for sports stadium naming rights.

We have included an Excel copy of each of the three algorithms with this ex parte filing in order to permit interested parties to calculate impacts on carriers that might be eligible for this proposed support.

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[6] In its May 12, 2008 ex parte in WCD No. 05-337 and CCD No. 96-45, the Sprint Nextel proposal of a HCS Plan would also limit portable LSS to carriers under 50,000 lines, stating at page 6 that this "*is an equitable change that recognizes that CETCs generally have large service areas and construct their networks to maximize switching efficiency.*" While we are generally not in agreement with the concepts espoused in the Sprint Nextel proposal, we do find one small area of agreement – limiting what WiPan terms as equivalent switching support to smaller carriers.

[7] In actuality, the intraMSA ratio was a gross simplification of the procedures that would be conducted by a CETC if there were a true mirroring of what an ILEC performs in a cost study. In order to have the level of precision present in an ILEC interstate cost study, the CETC would need to analyze activity on a tower by tower basis.

[8] As stated by RTG in their April 17, 2008 comments in the Reform Notices at page 7, referring to receipt of federal universal service support: "*the receipt of high cost universal service comes with an obligation, both ethical and fiscal, to use high cost support for the express provision of high cost universal service*."

Identical Basis for Scope and Scale issues – Equivalent Scope and Scale Support (ESSS)

While GVNW has long maintained[9] that access replacement support should not be portable, we note that several commenters in the Reform Notices offer an alternative view with regard to smaller rural wireless carriers. For example, in its Reform Notices comments at page 19, RICA asserts that "*RICA member rural CLECs [] operate at essentially the same scale and scope as their ILEC affiliates.*"

We considered a variety of options for capturing a representation of the scope and scale disadvantages alleged by smaller rural wireless carriers. While several possible options would include some fairly complex calculations, we have heeded the Commission's Notice that it seeks an expeditious conclusion to the pending long-term USF reform issues. Thus, in order to avoid requiring CETCs to complete a full "Part 36/69 cost study" process, we have developed a methodology patterned after the existing ETC ICLS support mechanism, and which employs a calculation that uses as a foundation the WiCAC EHCLS unseparated loop cost and then requires no additional inputs other than those already required for the WiCAC EHCLS algorithm or data that is publicly available.

We have included an Excel copy of each of the three algorithms with this ex parte filing in order to permit interested parties to calculate impacts on carriers that might be eligible for this proposed support. The numbers shown in the template are hypothetical and are used simply for illustrative purposes.

[9] In its reply comments dated May 16, 2008, Time Warner Cable Inc. asserts on page 17 that: "*Rural ILECs plainly seek protection for themselves.*" At least in the case of GVNW as a rural ILEC advocate, we offer alternatives for the Commission's consideration that are potentially beneficial outside of the rural ILEC segment.

Additional USF Recipient Obligations

In recognizing that minutes could be used as a denominator, GVNW has incorporated the proposal that Panhandle previously offered that cost be based on a minute of use metric.

The Panhandle Plan suggested that the fundamental purpose of federal USF support is to ensure that all Americans have quality, affordable telecommunications service, and because USF is generated from public dollars, there should be an additional obligation placed on carriers receiving support. That obligation is that they must make their network available to other carriers at the supported rate, which is recommended to be 1.15 times the national average cost to produce a minute of use. Under this concept, all carriers and their customers will benefit either directly or indirectly from universal service support. In many instances, a carrier will be enticed to use the network of a supported carrier since they are able to do so at the supported rate. The supported rate will often be well below the actual cost in sparsely populated high cost rural areas. In essence, all carriers can benefit as their cost to roam on a supported carrier network would be lower.

Since the WiPan is using the cost of a minute to determine support, the more minutes a network produces, the lower the cost per minute. As the cost per minute declines, so does a carrier's dependence on the Universal Service Fund.

<u>WiPan comports with the Commission's Goals of Comprehensive Reform</u>

The Commission has clearly signaled some of its intent for comprehensive reform in its May 1, 2008 CETC Interim Cap Order, with providing an option for relief from the interim cap if the carrier is able to make a cost-based showing. Despite the specious allegations of some respondents, there is not an inalienable right to receive support[10] based on another carrier's cost structure. Support is still portable, and available, when a carrier qualifies under the metrics set by the Commission. For example, not all ILECs receive high-cost loop support, rather only those that have costs that exceed a threshold. There has never been any allowance for marketing expenses in the HCL mechanism, contrary to the assertions made by CTIA at page 17 of their Reform Notice comment filing ("*wireless ETCs should be entitled to include in their cost calculations all of the same types of costs that can be included by rural ILECs, including marketing and other day-to-day operations costs*"), to the extent that CTIA may wish to include marketing in an identical HCL basis of support scenario.

Providing an identical BASIS of support does meet the test of being competitively neutral. In the comments and replies of participants such as OPASTCO, WTA and NTCA in the Reform Notice[11] filings, support is found for this type of approach.

[10] All market participants are treated equally, in an *Alenco* context, in a scenario where each is measured against a metric based on investments made in infrastructure and concomitant operating expense levels. Taken to an illogical extreme, the RCA-ARC assertions would generate support for CETCs that had not invested any money in infrastructure, certainly not an intended outcome of the Telecommunications Act of 1996 and the Commission's implementation orders.

[11] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05-337; CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support Rule NRPM)*; *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05-337; CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (*Reverse Auctions NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05-337; CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (*Joint Board Comprehensive Reform NPRM*) (collectively *Reform Notices*).

<u>The WiPan uses minutes as the EHCLS denominator</u>

Over the past several months, Panhandle sponsored some empirical research[12] that has yielded a defensible calculation of what the national average cost per minute of providing wireless service currently is.

The national average cost to produce a minute of use is estimated to be 2.69 cents per minute, and since there is no public data determining what the national average cost per minute, the following process was used to determine the estimate:

1. From CTIA's 2007 Annual Report service revenues are $138,000,000,000 and minutes of use (MOU) are 2,200,000,000,000. By dividing the service revenues by the MOU, you yield an average revenue of 6.27 cents per minute.

2. From AT&T's 2007 annual report, they have annual revenues of $38,768,000,000, and network cost of $16,648,000,000.

3. By dividing AT&T's annual revenue of $38,768,000,000 by CTIA's average revenue per minute of 6.27 cents, you yield 618,040,579,910 minutes on AT&T's network.

4. By dividing AT&T's network expense of $16,648,000,000 by the assumed number of minutes calculated in #3 above of 618,040,579,710, the result is a cost per minute of 2.69 cents.

The roaming rate offered by a carrier receiving federal universal service support would be calculated by multiplying 2.69 cents by the suggested multiplier of 1.15 to equal 3.1 cents per minute.

Due to the lack of similar information from Verizon, we have only used the data from AT&T to estimate the national average cost per minute. Information associated with smaller carriers was not considered as the data amounts are so small in comparison that it would get lost in the rounding and not change an average established based on the data from the large tier 1 carriers.

[12] The authors of this ex parte acknowledge the contribution of the research on the hypothetical national average cost per wireless minute performed by Mr. Kent Larsen and Mr. Mike Czerwinski of CHR Solutions.

Conclusion

The industry trade press (e.g., TR Daily, May 19, 2008) reported that the White House has notified all executive departments and agencies, including the Federal Communications Commission, that "*except in extraordinary circumstances*" all regulations to be finalized this year should be proposed by June 1 and issued by November 1. Subsequent trade press articles (e.g., TR Daily, May 23, 2008) have indicated that Chairman Martin has indicated that this White House memo does not pertain to independent agencies, and therefore will not impact the Commission's actions during the next six months.

Since the key components of the WiPan were all a part of the public record prior to the June 1 target date, we believe that a 2008 date is still achievable if the Commission determines that the WiPan meets its long term criteria. For carriers that seek to maintain a rigid avoidance to performing certain basic accounting and cost functions, the alternative could be more draconian – such as the resulting end game of the AT&T proposal for transitioning current CETC support to zero and shifting that support to a pure mobility construction vehicle.

We respectfully request that the regulators and all affected carriers consider this joint proposal that provides an implementable change to the identical support paradigm.